

**SEP 14 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VALENTIN LAZALDE-MURILLO,

Defendant - Appellant.

No. 06-30108

D.C. No. CR-05-30027-MRH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Michael R. Hogan, District Judge, Presiding

Submitted September 11, 2006\*\*

Before: PREGERSON, T. G. NELSON, and GRABER, Circuit Judges

Valentin Lazalde-Murillo appeals the sentence imposed following his guilty plea to illegal reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lazalde-Murillo contends that the district court erred in sentencing him pursuant to 8 U.S.C. § 1326(b)(2) to more than the two-year maximum set forth in § 1326(a) when he did not admit and a jury did not find any prior conviction. He argues that the doctrine of constitutional avoidance requires that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), be limited to the holding that a prior conviction that increases the maximum penalty need not be alleged in the indictment when the prior conviction, unlike here, is admitted as part of a guilty plea. Lazalde-Murillo also contends that intervening Supreme Court decisions have overruled this court's decisions interpreting *Almendarez-Torres* to allow sentence increases upon judicial findings of prior convictions.

These contentions are foreclosed. *See United States v. Beng-Salazar*, 452 F.3d 1088, 1091 (9th Cir. 2006).

**AFFIRMED.**